

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KENNETH W. KRIESER,

Plaintiff,

1:12-cv-695-CL

TEMPORARY RESTRAINING ORDER

v.

THE BANK OF NEW YORK MELLON,
AS TRUSTEE FOR THE CERTIFICATE
HOLDERS CWALT, INC., ALTERNATIVE
LOAN TRUST, 2006-18CB MORTGAGE
PASS-THROUGH TRUST CERTIFICATES,
SERIES 2006-28CB and RECONTRUST
COMPANY, N.A.,

Defendants.

SIMON, District Judge.

Plaintiff seeks an ex parte temporary restraining order to enjoin the foreclosure sale of his house. Plaintiff alleges the house is scheduled for a foreclosure sale on April 30, 2012 and defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Amongst other arguments, plaintiff alleges defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. In Oregon, a party initiating non-judicial foreclosure proceedings must record all assignments of the trust deed. ORS 86.735(1); Hooker v. Northwest Trustee

Services, Inc., 2011 WL 2119103, *3 (D. Or. May 25) (internal citation omitted; In re McCoy, 2011 WL 477820, at *3-4 (Bankr. D. Or. Feb. 7)); James v. Recontrust Co., et al, 2012 WL 653871, at *19-20 (D. Or. Feb. 29). Plaintiff alleges MERS is listed as the beneficiary on the deed of trust at issue.

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiff's request for a temporary restraining order (#4). Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 243 Northview Drive, Eagle Point, Oregon, from this day until Monday, May 7, 2012, at 5:00 p.m. I will hold a hearing on whether to issue a preliminary injunction at 1:30 p.m. on May 7, 2012, by telephone. The Court will initiate the call.

IT IS SO ORDERED.

DATED this 25th day of April, 2012 at 4 o'clock PM.

A handwritten signature in black ink, appearing to read "Michael H. Simon", written over a horizontal line.

Michael H. Simon
United States District Judge